**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO.1493 OF 2006.**

Balaso M. Parit .. Petitioner

versus

Sou. Vimal S. Mote
& Another ..Respondents.

Mr.Rahul Walvekar for the Petitioner

Ms.V.V.Pai for the respondent.

**Coram : S.R.Sathe, J.**
**Dated : 25th January, 2007**

P.C.

1. Heard learned Advocate for the petitioner as well as for the respondent.

2. The suit simplicitor for permanent injunction was filed by the plaintiff against the defendant obstructing plaintiffs possession of the suit land.

3. At the time of filing the suit the plaintiff also filed application Exhibit 5 seeking temporary injunction. The said application was rejected. Being aggrieved by the same, the plaintiff preferred Misc. Civil Appeal No.2 of 2004. After hearing

both the parties, the learned Additional District Judge came to the conclusion that the plaintiff had made out a primafacie case showing that the suit land is in his possession and therefore the application Exhibit 5 was allowed. The above mentioned order passed by the first Additional District Judge is challenged by the original defendant in this Writ Petition.

4. The learned Advocate for the petitioner vehemently argued before me that though the sale deed is executed in favour of the plaintiff, for a period of about 20 years the plaintiff did not take any steps to get his name entered in the column of cultivation and during all this time the defendant was in actual possession of the property. Not only that but he also obtained loan from the bank on the suit land and also paid the water charges etc for the suit land.

5. While considering the prima facie case first we have to bear in mind that the plaintiff has purchased the property in question not from any stranger, but from the father of the present petitioner i.e. the original defendant. In this

sale deed it is clearly mentioned that the possession of the suit property is given by the plaintiff. So, now, it in fact does not lie in the mouth of the defendant who is claiming through his father that the plaintiff has not actually received the possession or that the said sale deed is not correct etc. We cannot ignore the fact that it is a registered sale deed. At no point of time, the defendant has filed any suit for declaration that the same has been obtained by fraud and getting the said sale deed cancelled. So, due weightage shall have to be given to the averments made in the said sale deed.

6. It is true that while considering application for temporary injunction one has to take into consideration the possession of the suit land on the date of the suit. Even if we see the 7 x 12 extract for the said year, it shows the name of the plaintiff in the column of cultivation. Incidently, it must also be noted here that when the defendant challenged the entry in the name of the plaintiff the first two Revenue Courts have also decided the matter in plaintiff’s favour. Having regard to this aspect, the Additional District Judge, Islampur, has

correctly held that the plaintiff has made out a prima facie case and all findings are in his favour and therefore allowed Exhibit 5. I do not find any error of law in the said order. There is no necessity to interfere with the said order in this petition. Hence, petition is dismissed.

**(S.R.Sathe, J.)**